

333
7
copy 1

THE LOUISIANA PURCHASE

AND THE

APPEAL TO POSTERITY

BY

JOSIAH PHILLIPS QUINCY

THE LOUISIANA PURCHASE

AND THE

APPEAL TO POSTERITY

BY

JOSIAH PHILLIPS QUINCY

[REPRINTED FROM THE PROCEEDINGS OF THE MASSACHUSETTS HISTORICAL
SOCIETY, NOVEMBER, 1903]

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

CAMBRIDGE:
JOHN WILSON AND SON.

University Press.

1903.

E333
.Q7

1974

Y7A9B11 311
22310900 70

THE LOUISIANA PURCHASE.

IN an American city recently conspicuous before the world for what is corrupt and disheartening in democratic government at the present stage of its evolution, we are about to celebrate the purchase of the vast territory once known as Louisiana. The treaty with France by which this extensive domain was added to the confederated States which had chosen Thomas Jefferson as their chief magistrate, was lauded — I may say officially lauded — in that city not many months ago. It is soon to be celebrated with yet more magnificence. The glory that has come to us from this extension of the Union will doubtless be contrasted — as it has already been contrasted — with the unpatriotic objections of certain “little Americans” (so an official personage recently called them) who asserted that the violation of the Federal Constitution embodied in the treaty with France was wrong in principle and likely to prove disastrous in outcome. That the Constitution, as it then stood, was violated has been admitted by men whose competency in judgment cannot be denied.

President Jefferson and his Secretary of State, James Madison, one of the framers of the great compact, head the list. Their names can easily be followed by those of eminent statesmen and publicists. One of Thomas Jefferson’s biographers is constrained to admit that in this matter “the Executive authority had to be stretched until it cracked.” And our associate Mr. Morse in his admirable life of the third President disposes of the subject after this fashion: “The Government was without Constitutional authority to make the purchase upon terms which substantially involved the speedy admission of the new territory in the shape of new States to the Union.”

Somewhat conspicuous among other remonstrants was Josiah Quincy, a representative from this State to that Congress when it was decided to carry out the most objectionable provision of the treaty with France by admitting Louisiana as an equal with the States which had agreed to unite for certain purposes under a general government. Alluding to his protest against the violation of the contract which established the Union, Mr. Quincy said: "By this people and by the event if this bill passes, I am willing to be judged whether it be not a voice of wisdom."

A hundred years have passed since the Louisiana purchase, and by the voices most in evidence Mr. Quincy's remonstrance is judged and condemned. Condemned also is the approval of his friend John Lowell who assured the congressman that his warning of evil to come from the admission of States to the Union, otherwise than by the means prescribed by the Constitution, would do him "more credit with posterity" than anything he had ever done. Well, posterity has arrived — that is, an infinitesimal portion of it — and with resonant periods of rhetoric supported by din of drum and cannon, it is ready to dishonor the draft that Mr. Lowell drew upon it.

It is an acknowledged function of an historical society to sit as a court of appeal competent to reverse the hasty judgments passed by contemporaries upon some memorable event. Its jurisdiction may be stretched somewhat further. I think it may question the decisions of any of the ever-increasing sequence of posterities — even of that one among them which happens to be clamorous in its immediate environment.

There are two ways of regarding history. We are sometimes told — oftener to-day than ever before — that the turns and twists in its turbid stream simply register the results of cosmical and biological conditions, and that it is inconceivable that it should have run in other channels than those it actually filled. When told that we must so regard the rushing flood that has landed us upon this bank and shoal of time where for a moment we are permitted to stand, I can command no logic to show the determinist that he is wrong. On the contrary, he can annihilate me with legitimate deductions from the pronouncements of Science and Theology — not less from the teachings of Darwin and Haeckel, of Bain and Maudsley, than from those of the great theologians Augustine, Calvin, Ed-

wards. He can leave me no resource but to change the "Credo quia impossibile est" of Tertullian into Credo *tanquam* impossibile est — and so make an end of it.

I shall assume that all here present agree with these words of the late Lord Acton quoted with approval by Mr. Bryce: "It is the office of historical science to maintain morality as the sole impartial criterion of men and things." Otherwise we might well follow the example of the ancients and erect altars to Fortune as the only discernible director of human affairs. An historical tribunal can by no means adopt the word "patriotism" as a summary of the whole duty of man. It should be free from the bias of nationality. To say that an act must meet its approval because it tended to the aggrandizement of a people occupying a given division of the earth's surface is quite beside the mark. The only question to be considered is whether a direction of history, initiated by this or that responsible human act, was clearly a beneficent factor in the evolution of our race towards those moral and social altitudes which it is pleasant to assume man is destined to attain. If it is decided that this was the case, then those who opposed that act must be held up for censure as examples of short-sightedness, captiousness, and error.

I propose to say a few words in mitigation of the sentence hastily passed upon those Massachusetts men who were opposed to the provision of the treaty with France which resulted in the admission of the State of Louisiana — to its admission without the restriction prohibiting slavery which under the Ordinance of 1787 had been applied to the north-western territory which Congress had been permitted to divide into States.

Of Thomas Jefferson, the most picturesque figure in our line of Presidents, — though some might except the present incumbent of that office, — I need say little. I have heard him presented from the sombre point of view of Federalists who were his contemporaries, and we all know the honeyed emulsions with which his biography has been administered to the readers of Parton and Watson. No one can doubt our indebtedness to him as a great phrase-maker. He has left us sentences which embody ideals fit to be held aloft for the contemplation of his countrymen, and which should spur them to an ever-increasing effort to embody them in conduct. I think it would

be difficult to improve upon Hamilton's characterization of at least one side of this fascinating personality: "A man of sublimated and paradoxical imaginations." Sublimated, in its figurative sense of pure and refined, many of these imaginations certainly were; that some of them were paradoxical is evident from the most cursory examination of what he has left us. One of the most stimulating of Jefferson's sayings gave his views respecting the qualifications for office in this republic. The competency of the applicant was to be determined by the affirmative answer to three questions: "Is he honest, is he capable, is he faithful to the Constitution?" Upon assuming the duties of his great office the President makes oath that to the best of his ability he will "preserve, protect, and defend the Constitution of the United States." President Jefferson by his own confession was unfaithful to the Constitution. He admitted that he had "no right to double and more than double the area of the United States" under the conditions stated in the treaty with France. That act was condemned by the legislature of Massachusetts as well as by her prominent citizens. It has been applauded by more numerous voices. Its admirers have likened it to the action of a trustee who exceeded the restrictions of the deed of trust in order to make an investment greatly to the advantage of its beneficiaries. I can neither admit that this comparison fits the case, nor that a trustee would be excusable who so disregarded his instructions. Yet I am not disposed to deny that occasions are conceivable when not only the law of the land but the most imperative of the Ten Commandments might be rightly put aside. Such a case was given in the newspapers some years ago. As the result of a railroad accident, a man was lying in agony — his legs crushed and held by the engine which had fallen upon him. Flames that could not be extinguished were rapidly approaching. The sufferer asked a by-stander to relieve him from prolonged and useless torture by a bullet from a pistol. I dare not say that some insignificant man in the street would have done wrong by complying with that pathetic petition. But how if the request had been to one of high and conspicuous position, — to the governor of the State or to the chief justice of its court? Then it should never have been granted. Why? We may read the answer, good for all time, in the Shakespearian drama. When it was urged

that the officials of the Venetian court should wrench the law to their authority and so do a great right by doing a little wrong, the representative of the learned jurist of Padua gives no uncertain rebuke to the proposal. And the answer was not unworthy of the learned jurist of England who by some persons, not altogether demented, is believed at times to have uttered himself through the player at the Globe Theatre,

“T will be recorded for a precedent;
And many an error, by the same example,
Will rush into the State: it cannot be.”

The admission of Louisiana, by means not sanctioned by the Constitution, was recorded for a precedent, and many an error by the same example has rushed into the State. Mr. Quincy did not live long enough to see his country expanding by aggressive war in Asiatic islands, but he did live long enough to be satisfied of the wisdom of his remonstrance. The deeds of one generation largely influence the ideas of the next: they control its thought. And “this humdrum politician” (so he has recently been called) was confirmed in his belief that such specious and temporary gain as may be reached by disrespect to organic law must be paid for by a loss that will far exceed it. He lived to see this violation of the Constitution pass into a tradition; and the history of Church and State has been read to little purpose if we do not know that an accepted tradition sooner or later secures confirmation by authority. And so it has come to pass that the Supreme Court has decided that Jefferson and Madison and their eminent contemporaries were altogether wrong in supposing that the Louisiana purchase was without constitutional justification, for behold that elastic instrument can be stretched to sanction acquisition of territory by conquest as well as by purchase or treaty. Congress has been lifted above all courts and constitutions, and may deny to our dependencies even the right of trial by jury.

✓ It goes without saying that the Supreme Court, being a human and fallible tribunal, is not uninfluenced by its congressional environment and by the returns of the elections. It was only the other day that Professor Nelson, the well-known publicist, made himself responsible for the following statement: “One of the justices of the United States Supreme

Court has declared that he will determine questions of law with what he regards as the drift of public sentiment." And I think we may safely add that this accommodating magistrate would be likely to determine this compulsive "drift" according to the wishes of party leaders who happen to be in the ascendant. Let me not be misunderstood; constitutions develop themselves and ought to do so. The framers of our Constitution recognized this and devised a way in which they thought it could be prudently done. We have chosen to develop our organic law by the familiar process by which statute law has been developed. We know that the courts extend and modify what was clearly the intention of the legislator, and that statute law is constantly growing by these decisions. But is it well to develop a carefully written constitution, which provides a means for its amendment, in the same way? Evidently the answers to that question may show divergence of opinion.

To go back to 1811. Whitney's saw-gin was invented in 1793, and the slave States of America were recognized as the cotton fields of the world. Political decisions result from a medley of mixed motives; and of some of the most active of these motives it is desirable that nothing be said. The art of the politician selects and proclaims that one among them which is most presentable. The concealed motive in the treaty with France was to forward the supremacy of the slave-holding power. The shrewd and capable leaders, whom the South has never lacked, saw that here was an opportunity to place their institution in an impregnable position. They realized that the indefinite continuance of slavery depended upon spreading their peculiar property, with its privilege of three-fifths representation, over as wide an area as possible. This they saw; and Josiah Quincy, and the good and true men who stood behind him, saw it as clearly as they did.

Whether the expansion of what we are proud to call American institutions is desirable was not then the question. The question was whether the expansion of slavery was a function that the States had delegated to a passing Congress and a passing Executive. I have talked with Mr. Quincy about his position at this time and feel sure that I give it correctly. Whether the purchase of territory that included the Mississippi River was constitutional or not, he never doubted that

the States would ratify and confirm it. He was satisfied that, had the appeal been made to them, the States might have admitted Louisiana even without the provision looking to the extinction of slavery, which had been applied to other territorial possessions. But they would have done this as a concession to an extraordinary situation never again likely to occur: the mouth of the Mississippi was an asset that could not be duplicated. It was the assumption, cunningly incorporated in the treaty, that Congress might make the slave power predominant in the Union by multiplying States in foreign territories, that aroused his indignant opposition. There was the dead fly in the ointment of the apothecary which it needs no Scripture to assure us must soon become unpleasantly evident. What has been absurdly called "the envenomed anti-expansion sentiment" of Mr. Quincy culminated in language frequently quoted in the histories and cyclopædias. He advanced the opinion that with the unconstitutional admission of the Louisiana "the bonds of this Union are virtually dissolved; that the States which compose it are free from their moral obligations; and that as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation — amicably if they can, violently if they must." He thus asserted the indefeasible right of resisting acts that were plainly unconstitutional; it was the right certainly indicated by Jefferson in the resolutions he drew for the Kentucky legislature as early as 1798. It was the right conceded by John Quincy Adams, provided it was exercised under the sanction of conscience and in the fear of God. It was a right implied even by the great "Defender of the Constitution," when he uttered the obvious truism, "A bargain cannot be broken on one side and still bind on the other."

Massachusetts had accepted the Union as a compact between independent sovereign states. If there was any taint of treason in the situation, its stigma was upon those who by the usurpation of undelegated power had pushed the issue of the extension of slavery to the front. And at the front it remained, ever alert and aggressive, until the repeal of the Missouri Compromise and the passage of the Kansas-Nebraska bill aroused a political party to resist its encroachments.

Whether secession from the Union was a reserved right of the States has been debated on each side by men equal in up-

rightness and ability. The question was decided at Appomattox Court-House, and there is no appeal. Those who lived through the Civil War know how odious the doctrine of this reserved right could be made to appear. And those who believe, as I do, that resistance to it was then laudable as favoring the moral progress of man, shudder to remember how near to success came the attempt to divide the Union in the interest of slavery. As we read the chapters of history that give the facts of that terrible struggle, they seem like chapters of accidents. While there is all the virtue in an "if" that Touchstone ascribed to it, there are possibilities in that familiar particle from which we shrink in dismay.

If Prince Albert had died a few weeks earlier leaving unmodified the offensive terms in which Palmerston demanded satisfaction for the action of Captain Wilkes! If the exigencies of politics had sent a man of less wisdom and discretion than Mr. Adams to represent us in England! If a sudden hoarseness had prevented Henry Ward Beecher from going up and down that land and holding the working classes from following the lead of the aristocracy! How easily these and a hundred other "ifs" might have confirmed the expectation of the South that European intervention would stop the war. But there is one "IF" that we may well write in capitals, for it dominates all the others. If there had been no great moral question involved, or if the moral issue had been the other way, the secession of those eleven States would have succeeded — and ought to have succeeded. Suppose they could truly have asserted that their industrial interests had been paralyzed by a tariff of doubtful constitutionality — a tariff imposed with no view to revenue but to enrich certain favored classes in other States — think you that men of intellect and conscience like Mill and Cairnes, John Bright and Labouchere, would have stood as a barrier to hold back the sordid interests that were anxious to crush us? What we call "the rebellion" was unsuccessful because the moral sense of the nations (with which their selfish rulers had to reckon) had reached a degree of enlightenment capable of perceiving that even if slavery could still be tolerated the time had passed when it could be encouraged. This position, held in 1861 by the general consensus of mankind, had been reached by Josiah Quincy and his friends in 1811, just fifty years before.

President Jefferson has been extolled for his supposed foresight in getting possession of the West; I submit that there was also foresight in the men who perceived the disaster that must come from an unconstitutional concession to the slave power—though I cannot claim that their imaginations were powerful enough to picture the horror of the consequences that subsequent history reveals.

I have implied that to obtain in clarified essence the lessons of the past it is not enough to divest ourselves of passion, of prejudice, of partisanship; we must also stifle the uplifting emotion of patriotism. The French historians are fond of considering what course history would have taken if something that unexpectedly happened had not stopped the way. And though I cannot for a moment admit the preposterous supposition that but for the treaty with France we should have lost the West, it may be permitted for a moment to enter the fairy-land of conjecture and assume that the fear of the time was realized and that England had gained possession of it. We know that the mother country was eager to plant herself upon this territory of uncertain limits. Napoleon's motive for selling was that the British fleet in the Gulf of Mexico stood ready to pounce upon it the moment war with France was declared. The London press was clamorous for its acquisition. Even up to the time of the battle of New Orleans, England had not relinquished her desires in this direction. If the treaty of peace had not been signed and the battle had gone the other way, Sir Edward Pakenham was provided with men of experience in civil affairs competent to govern the lands he hoped to acquire. Militant patriotism cannot contemplate the possibility of such a catastrophe without a shudder. But can the unbiassed student of history be so easily persuaded that a disaster to humanity would have come of it? Such an inquirer might remember that in 1832 the British Parliament voted a hundred millions of dollars to get rid of slavery in Jamaica, and that this was followed by its abolition throughout the British dominions. Knowing that the presidents of our universities are sober men not given to exaggeration of speech, he might recall the words addressed by one of them to the graduates of the present year. These young men were reminded that they were citizens of a country "strangely lenient toward political venality and civic corruption. We

have seen great cities held in the grasp of self-appointed bosses and rural regions bought and sold in unblushing defiance of law." Possibly one might call to mind the language of that sterling American citizen, Dorman B. Eaton, who after due examination was forced to acknowledge that "England has brought about changes which have elevated the moral tone of her official life . . . while this great work has been going on in the mother country, we have fallen away from the better methods of our earlier history." The inquiry might be raised whether the average of human well-being in the British commonwealths, Australia, Tasmania, New Zealand, was decidedly less than with us. Some of these great States have attacked economic problems before which we stand dazed and helpless; from them we have borrowed two of the best of our recent acquisitions, the Australian ballot and the system of land registration. While England and her dependencies are far enough from being the ideal states that we hope for in the future, can it be asserted that their progress in that direction has been far less than our own?

The last legislature of Massachusetts increased the burden of her debt-laden people by contributing one hundred thousand dollars to the splendor of the celebration at St. Louis. Let us not forget that this same Massachusetts once declared by its legislature that Jefferson's treaty with France transcended the constitutional power with which Congress had been entrusted, and reaffirmed this belief as late as 1845 by declaring that "the project of the annexation of Texas unless arrested on the threshold, may drive these States into a dissolution of the Union." Robert C. Winthrop, her representative in Congress and for so many years the honored President of this Society, expressed the feeling of his constituents in these words: "I deny the right of this government to annex a foreign state by any process short of an appeal to the people in the form which the Constitution prescribes for its amendment."

I do not object to the appropriation for the St. Louis festival. It is pleasant to be captured by the spectacular, and perhaps there is too little of it in our common American life. Only a few fragments of history stick in the general memory, and it is easy to fashion these to any shape that may be thrust into the foreground of consciousness. It is easy to forget that organic law is the basis not only of order but of moral prog-

ress, and that after one compromise with principle there is no foothold in the descent. For the evil of such a compromise gradually increases until it becomes incorporated with our lives ; and then we accept it as we accept the natural forces of the Cosmos by which we exist or cease to be. It is true, as Hamlet says, that "our indiscretion sometimes serves us well" ; but it will always serve us ill if, dazzled by the splendor of its supposed consequences, we forget that it *was* indiscretion and call it by some better name.

There is good cause for much of the exultant patriotism that will be in evidence at the St. Louis Exhibition. Despite past errors and some present discouragements, the outlook towards the future justifies an invigorating hopefulness. The natural laws of economics are realized as never before, and civic duty was never put so near to the front of human obligations. Let the orators magnify those responsible for the Louisiana purchase, if this the occasion demands. But if they follow a not unusual procedure and stigmatize as "envenomed anti-expansionists," and credit with "a narrow parochialism," the Massachusetts men who opposed the unconstitutional creation of new slave States, I believe that competent students of history will respond with the Scotch verdict, "Not Proven."



LIBRARY OF CONGRESS



0 011 782 879 7